

# **Exhibit 56**

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION

ACQIS LLC \* July 13, 2022  
\*  
VS. \* CIVIL ACTION NOS.  
\*  
ASUSTEK COMPUTER, INC. \* W-20-CV-966  
LENOVO GROUP LTD., ET AL \* W-20-CV-967  
WIWYNN CORPORATION \* W-20-CV-968

BEFORE THE HONORABLE ALAN D ALBRIGHT  
MOTION HEARING

APPEARANCES:

For the Plaintiff: Case L. Collard, Esq.  
Gregory S. Tamkin, Esq.  
Dorsey & Whitnay LLP  
1400 Wewatta Street, Suite 400  
Denver, CO 80202

Paige Arnette Amstutz, Esq.  
Scott, Douglass & McConnico, LLP  
303 Colorado Street, Suite 2400  
Austin, TX 78701

For Defendant ASUSTek:

Eric A Buresh, Esq.  
Michelle L. Marriott, Esq.  
Erise IP, PA  
7015 College Boulevard  
Overland Park, KS 66211

For Defendant Lenovo:

Jeffrey S. Seddon II, Esq.  
Desmarais LLP  
230 Park Avenue, 26th Floor  
New York, NY 10169

J. Stephen Ravel, Esq.  
Kelly Hart & Hallman LLP  
303 Colorado Street, Suite 2000  
Austin, TX 78701

For Defendant Wiwynn:

Harold Davis, Esq.  
Greenberg Traurig  
101 Second Street, Suite 2200  
San Francisco, CA 94105-3668

Joseph William Shaneyfelt, Esq.  
Greenberg Traurig, LLP  
300 West 6th Street, Suite 2050  
Austin, TX 78701

Mark D. Siegmund, Esq.  
Steckler Wayne Cochran Cherry, PLLC  
8416 Old McGregor Rd.  
Waco, TX 76712

Court Reporter: Kristie M. Davis, CRR, RMR  
PO Box 20994  
Waco, Texas 76702-0994  
(254) 340-6114

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transcript produced by computer-aided transcription.

01:35 1 (Hearing begins.)

01:35 2 (Call to Order of the Court)

01:35 3 DEPUTY CLERK: A civil action in cases  
01:35 4 6:20-CV-966, 967, 968, ACQIS LLC versus ASUSTek  
01:35 5 Computers, Incorporated, et al. Cases called for a  
01:35 6 motions hearing.

01:35 7 THE COURT: Announcements from counsel,  
01:35 8 please.

01:35 9 MS. AMSTUTZ: Good afternoon, Your Honor.  
01:35 10 May it please the Court. Paige Amstutz with Scott  
01:35 11 Douglass & McConnico on behalf of plaintiff ACQIS LLC.

01:35 12 With me are my co-counsel from Dorsey &  
01:36 13 Whitnay, Mr. Case Collard and Mr. Greg Tamkin. And  
01:36 14 depending on the issue at hand, you'll hear from one of  
01:36 15 those two gentlemen.

01:36 16 THE COURT: Very good.

01:36 17 Mr. Ravel?

01:36 18 MR. RAVEL: Your Honor, Steve Ravel for  
01:36 19 the two Lenovo defendants -- the two remaining Lenovo  
01:36 20 defendants.

01:36 21 With me today is our client  
01:36 22 representative, Taylor Ludlum. And from the Desmarais  
01:36 23 firm, Jeff Seddon. And Mr. Seddon and I will both be  
01:36 24 arguing today.

01:36 25 THE COURT: Very good. The first

01:36 1 issue -- I'm sorry.

01:36 2 Mr. Siegmund?

01:36 3 MR. SIEGMUND: Good afternoon, Judge.

01:36 4 Mark Siegmund on behalf of defendant Wiwynn  
01:36 5 Corporation.

01:36 6 With me this afternoon are my two  
01:36 7 co-counsel, Hal Davis and Joe Shaneyfelt from Greenberg  
01:36 8 Traurig. And we're ready to proceed.

01:36 9 THE COURT: Which office of Greenberg are  
01:36 10 you with?

01:36 11 MR. DAVIS: I'm in San Francisco, Your  
01:36 12 Honor.

01:36 13 THE COURT: Very good.

14 MR. SHANEYFELT: And I'm in Austin.

15 THE COURT: And you work with my friend  
16 Dale Wainwright?

17 MR. SHANEYFELT: Yes, sir.

18 THE COURT: Very good.

01:36 19 MR. SHANEYFELT: And Mark Stratton.

01:36 20 MR. DAVIS: Thank you, Your Honor.

01:36 21 THE COURT: Yes, sir.

01:36 22 MR. BURESH: Good afternoon, Your Honor.  
01:36 23 I'm Eric Buresh on behalf of ASUSTek Computer, Inc.  
01:37 24 And with me is Michelle Marriott.

01:37 25 THE COURT: I don't think I've had the

01:37 1 pleasure of having you in my court before, have I?

01:37 2 MR. BURESH: Only on video, Your Honor.

01:37 3 THE COURT: Okay.

01:37 4 MR. BURESH: So it's a pleasure to be  
01:37 5 here.

01:37 6 THE COURT: Well, I'm sure there are  
01:37 7 other places than Waco in the summer you would like to  
01:37 8 be, but I'm glad you're here.

01:37 9 MR. BURESH: Thank you, Your Honor.

01:37 10 THE COURT: Okay. The first issues we  
01:37 11 need to take up are -- I think there are essentially  
01:37 12 three motions that are the same, asking for, for lack  
01:37 13 of a better word, an alignment of the claim  
01:37 14 constructions with what has been determined in another  
01:37 15 court.

01:37 16 So I'm happy to take that up first from  
01:37 17 whoever's going to argue that.

01:37 18 MR. RAVEL: Your Honor, Lenovo's going to  
01:37 19 take the lead on that one.

01:37 20 May I proceed, Your Honor?

01:38 21 THE COURT: Please.

01:38 22 MR. RAVEL: Judge, I don't want to get  
01:38 23 off on the wrong foot with you today, but I would --

01:38 24 THE COURT: You're here.

01:38 25 (Laughter.)

01:38 1 MR. RAVEL: So it's sort of guaranteed.  
01:38 2 I don't have much to lose, do I?

01:38 3 THE COURT: Right.

01:38 4 MR. RAVEL: I would phrase this first set  
01:38 5 of motions a little bit differently. I would like to  
01:38 6 call it whether there's going to be issue preclusion  
01:38 7 based on an on-all-fours Federal Circuit opinion.

01:38 8 Other than that, you have too many cases  
01:38 9 to ask you to remember that every time -- oh, by the  
01:38 10 way, I'm going to argue a procedural issue why this is  
01:38 11 ripe. And Mr. Seddon's going to pick up with the  
01:38 12 substance. And then the other defendants will follow  
01:38 13 along.

01:38 14 Judge, every time I stand up against this  
01:39 15 ACQIS team, I compliment their creativity and their  
01:39 16 persistence. And I do that sincerely. Today will be  
01:39 17 no different.

01:39 18 An example of that creativity and  
01:39 19 persistence arose recently when they asked Judge  
01:39 20 Gilliland to order an apex deposition of Lenovo. He  
01:39 21 told them no. Then they said how about taking his  
01:39 22 secretary? And he told them no.

01:39 23 So those are creative. They're  
01:39 24 persistent. But they ended up being wrong.

01:39 25 And I think the notion that collateral

01:39 1 estoppel issue preclusion based on the Federal Circuit  
01:39 2 decision in EMC is of that ilk. Let me elaborate very  
01:39 3 briefly, like a couple minutes briefly.

01:39 4 Two things are true that should make that  
01:39 5 decision really pretty easy. Number one, ASUSTek is  
01:39 6 both a movant under 12(c) and has answered. So that  
01:40 7 should take care of things anyway. And something that  
01:40 8 the Court graciously did yesterday, that is denying our  
01:40 9 12(b)(6) motions, made the analysis pretty easy too.

01:40 10 We had this argument before that we were  
01:40 11 in a Hobson's choice, that if we answered when the  
01:40 12 12(b)(6)s were pending, we waived those. And if we  
01:40 13 didn't answer, we risked -- took a risk that the other  
01:40 14 side would argue that a 12(c) was premature. We got  
01:40 15 that second one.

01:40 16 Now, we're going to be answering within  
01:40 17 days, so it shouldn't really make much difference. But  
01:40 18 let me go on for like another minute.

01:40 19 It's undisputed, Judge, and indisputable  
01:40 20 that ACQIS' problem with the 12(c) motion is entirely  
01:40 21 based on its timing and not on its contents. There is  
01:41 22 no argument that it goes beyond the four corners, that  
01:41 23 it's not a 100 percent totally proper 12(b), timing  
01:41 24 only.

01:41 25 And now we're kind of circling back to



01:41 1 one of those creative and persistent things. If you're  
01:41 2 in ACQIS' place, try to get a 12(c) that's a proper  
01:41 3 12(c) with an argument about timing converted to a  
01:41 4 summary judgment.

01:41 5 A cynical -- a cynical advocate might say  
01:41 6 that was an attempt to cut Lenovo's case law and  
01:41 7 summary judgment quota of pages in half. And if that's  
01:41 8 so, it was creative and persistent.

01:41 9 But we just -- we think that the better  
01:41 10 course is to take up the 12(c)s now and to reject the  
01:41 11 notion of a premature advisory opinion about summary  
01:41 12 judgment pages.

01:42 13 Judge, I think you would be disappointed  
01:42 14 if I didn't refer to at least one slide, and it is only  
01:42 15 going to be one today. And that is Slide 2 in our  
01:42 16 deck. The first substantive slide is a San Antonio  
01:42 17 opinion that collects cases from all over the Fifth  
01:42 18 Circuit and all over the country that says proper  
01:42 19 12(c)s may be -- that where the argument is made that  
01:42 20 they're premature can be reclassified as a 12(b)(6).

01:42 21 THE COURT: Is this an Xavier Rodriguez  
01:42 22 opinion?

01:42 23 MR. RAVEL: No. It's a magistrate whose  
01:42 24 name I didn't know, which is why I didn't tout the  
01:42 25 author all that much. But it's a good question, Judge.

01:42 1 THE COURT: Judge Rodriguez is probably  
01:42 2 the biggest scholar on civil procedure of anyone I'm  
01:42 3 aware of.

01:42 4 MR. RAVEL: Believe me, if I could have,  
01:42 5 I would have dropped his name. I mean, it's right up  
01:43 6 there with Andy Austin, if you think about it.

01:43 7 THE COURT: The late Andy Austin.

01:43 8 MR. RAVEL: Well, that's kind of a harsh  
01:43 9 term. How about the emeritus Andy Austin?

01:43 10 It's a big day in this case, Judge. When  
01:43 11 you decide issue preclusion, there is a possibility,  
01:43 12 using Lenovo as an example, that this case goes from  
01:43 13 unmanageable to manageable and a single jury trial. 40  
01:43 14 patent claims spread across 5 patents becomes 9 patent  
01:43 15 claims spread against 3 even before the second  
01:43 16 narrowing. So you have an opportunity today to make  
01:43 17 this case simpler and more manageable at a very key  
01:43 18 time.

01:43 19 We're in between opening expert reports  
01:44 20 and rebuttal expert reports. And if we could reduce  
01:44 21 the bulk of what we're doing appropriately by  
01:44 22 two-thirds, the Court understands better than anybody  
01:44 23 how the Court, its staff and the parties are best  
01:44 24 served by that.

01:44 25 So I'm going to turn it over to

01:44 1 Mr. Seddon for an Xavier Rodriguez-quality discussion  
01:44 2 of collateral estoppel and issue preclusion.

01:44 3 MR. SEDDON: Your Honor, if I may.

01:44 4 May it please the Court. I won't claim  
01:44 5 for an Xavier Rodriguez quality, although I appreciate  
01:44 6 Mr. Ravel's kind words.

01:44 7 But I am going to try to take on the  
01:44 8 issue of whether the Court is going to permit ACQIS to  
01:44 9 continue asserting claim construction arguments and  
01:44 10 standards-based infringement reads that both the  
01:45 11 District of Massachusetts and the Federal Circuit have  
01:45 12 already rejected, or whether the Court will follow the  
01:45 13 Federal Circuit's claim construction and the District  
01:45 14 of Massachusetts' determination of noninfringement, now  
01:45 15 affirmed, that ACQIS' patents do not cover products  
01:45 16 using the PCI Express standard under those  
01:45 17 constructions.

01:45 18 I think the answer is clear: The Court  
01:45 19 should follow the Federal Circuit's lead and stop ACQIS  
01:45 20 from continuing to assert its rejected theories.

01:45 21 Rather than the Court and the parties, as  
01:45 22 Mr. Ravel said, focusing on sort of a broad swath of  
01:45 23 claims over a broad set of patents, really now is the  
01:45 24 time to put the PCI Express infringement theories to  
01:45 25 the side and focus the case on the small set of patents

01:45 1 and the manageable set of asserted claims that are  
01:45 2 remaining under ACQIS' theory of infringement against  
01:45 3 USB 3.

01:45 4 Now, Your Honor, we identified, as I'm  
01:46 5 sure you're familiar, a number of different bases for  
01:46 6 judgment in our 12(c) motion. And we also have our  
01:46 7 co-counsel's motions for issue preclusion and the  
01:46 8 motion for reconsideration of claim construction.

01:46 9 But I think the core of the issue and the  
01:46 10 easiest way to approach this is to focus on the  
01:46 11 collateral estoppel argument. And so unless Your Honor  
01:46 12 has any questions on the other issues, that's what I'm  
01:46 13 going to focus on.

01:46 14 THE COURT: That's fine.

01:46 15 MR. SEDDON: So collateral estoppel, in  
01:46 16 our opinion, prevents ACQIS from two arguments here.  
01:46 17 First, it prevents ACQIS from challenging the Federal  
01:46 18 Circuit's claim construction. And, second, it prevents  
01:46 19 ACQIS from asserting PCI Express infringes claims, or  
01:46 20 setting PCI bus transaction or address and data bits of  
01:46 21 a PCI bus transaction, or any variation thereof.

01:46 22 Now, collateral estoppel requires four  
01:46 23 elements, all of which are present here. The first is  
01:46 24 identity of issues. The second is that the identical  
01:47 25 issues were actually litigated in the prior litigation.

01:47 1 The third, that the issues actually litigated were  
01:47 2 necessary to the judgment. And the fourth is that  
01:47 3 there's no sort of special circumstances that preclude  
01:47 4 collateral estoppel.

01:47 5 ACQIS, in its briefing, didn't dispute  
01:47 6 the second and third -- or the third and fourth  
01:47 7 elements. And those are addressed in our brief, so I'm  
01:47 8 not going to cover those here.

01:47 9 But I do want to focus on the first two  
01:47 10 which I really think are the two issues in dispute:  
01:47 11 Whether or not the issues were identical in the prior  
01:47 12 litigation and whether or not the issues were actually  
01:47 13 litigated in prior litigation.

01:47 14 So first I want to look at the claim  
01:47 15 construction issues. And now I'm going to turn to  
01:47 16 Slide 3 of the deck that we handed up. So the first  
01:47 17 thing I think is important to keep in mind is that the  
01:47 18 asserted patents here are all closely related. They're  
01:47 19 continuations of the patents that were asserted in the  
01:47 20 EMC case.

01:48 21 So I won't belabor the point, but Your  
01:48 22 Honor can see on Slide 3 there's two different families  
01:48 23 of patents, one with non-reissues and one with  
01:48 24 reissues. And all of the patents asserted in this  
01:48 25 case, those are the patents highlighted in yellow, are

01:48 1 continuations of patents asserted in the EMC case.

01:48 2           So we are dealing with the same set of  
01:48 3 specifications, the same set of inventions, the same  
01:48 4 theory and the same disclosure. There's some minor  
01:48 5 tweaks to the specification, but as we'll go through,  
01:48 6 none of those are material. All the stuff that we're  
01:48 7 looking at here was in the patents in front of the EMC  
01:48 8 court and in front of the Federal Circuit.

01:48 9           Now, if we turn to the next slide, Slide  
01:48 10 4, you can see that the claim construction issues in  
01:48 11 this case are also identical. So we've got three sets  
01:48 12 of terms that we're asking Your Honor to adopt from the  
01:48 13 Federal Circuit's decision.

01:49 14           The first, "peripheral component PCI bus  
01:49 15 transaction." We have the same term in EMC and the  
01:49 16 same term here. Some of the terms refer to PCI bus  
01:49 17 transaction instead of saying the full thing spelled  
01:49 18 out, but they are otherwise identical.

01:49 19           The second set of terms "communicating  
01:49 20 address and data bits of PCI bus transaction" in EMC or  
01:49 21 "conveying or communicating address and data bits of  
01:49 22 PCI bus transactions" here are virtually identical  
01:49 23 except for the verb, which is a synonym. So that is an  
01:49 24 identical issue.

01:49 25           And in the final set of terms, the

01:49 1 encoding terms, here you've got some rewording, but  
01:49 2 honestly the substance is identical. You can see on  
01:49 3 both sets of terms on the third row we've got "encoded  
01:49 4 address and data bits of a PCI bus transaction," and  
01:49 5 the only real difference is whether or not you're going  
01:49 6 to encode them in a serial bit stream or a serial form.

01:50 7 Now, that's not a material difference  
01:50 8 here. And what's more, we know it's not material and  
01:50 9 we know that we should be looking at the core of the  
01:50 10 substance because the Federal Circuit tells us that  
01:50 11 when you're looking at collateral estoppel, you don't  
01:50 12 need to have identity of terms as long as the issues  
01:50 13 are identical.

01:50 14 And in this case, the Federal Circuit in  
01:50 15 its opinion on Footnote 1 said that the District Court  
01:50 16 was correct in treating related terms similarly.

01:50 17 So there's no reason for Your Honor to  
01:50 18 take a different tact and try to parse out these minor  
01:50 19 differences that ACQIS has not identified as material  
01:50 20 with regard to these terms versus the EMC terms.

01:50 21 So for the claim construction issue there  
01:50 22 is identity of issues. The first element of collateral  
01:50 23 estoppel is met, because the issues are identical.  
01:50 24 And, in fact, two of the terms are identical or  
01:50 25 effectively identical.

01:51 1 Now, if we turn to the next slide, Slide  
01:51 2 5, we get to the identity of issues with regard to  
01:51 3 infringement. And here, again, we have identical  
01:51 4 issues. ACQIS' theory of infringement is the same in  
01:51 5 this litigation as it was in EMC.

01:51 6 And just to show Your Honor, on the left  
01:51 7 side of the slide here we've got ACQIS' theory. This  
01:51 8 an excerpt from ACQIS' argument trying to show that it  
01:51 9 was asserting the same theory of infringement against  
01:51 10 effectively the same products across all defendants  
01:51 11 here.

01:51 12 And what did ACQIS say? ACQIS said that  
01:51 13 it's alleging that defendants' products infringe  
01:51 14 critical limitations of the asserted patent claims  
01:51 15 because, among other things, the Intel CPUs employ PCIe  
01:51 16 standards technology which plaintiff alleges practices  
01:51 17 critical limitations of the asserted patents.

01:51 18 So for these limitations, for the PCI bus  
01:52 19 transaction limitations, ACQIS is asserting a standards  
01:52 20 read here. And that's the same standards read they  
01:52 21 were asserting in the EMC case.

01:52 22 If you look on the right-hand side, you  
01:52 23 can see an excerpt from ACQIS' opening brief in the  
01:52 24 Federal Circuit appeal. They talk about the PCI  
01:52 25 standard being succeeded by the PCI Express standard.



01:52 1 And they say that PCI Express standard adopted the same  
01:52 2 new interface channel that ACQIS invented, making the  
01:52 3 same claim here.

01:52 4 And they -- then they go on to say that  
01:52 5 they, in fact, filed suit against EMC because those EMC  
01:52 6 computer modules that use PCI Express are using them to  
01:52 7 communicate PCI bus transactions.

01:52 8 So in both cases, here and in front of  
01:52 9 the Federal Circuit and EMC, ACQIS is asserting a  
01:52 10 standards-based read against PCI Express. We've got  
01:52 11 the identical read.

01:52 12 So that gets us to identity of issues for  
01:52 13 both claim construction and for noninfringement, or  
01:52 14 infringement.

01:52 15 Now, in fact, if you turn to the next  
01:53 16 slide, Slide 6, you can see that this was squarely at  
01:53 17 the heart of ACQIS' appeal. In their opening brief,  
01:53 18 the very beginning and introduction, they said the  
01:53 19 District Court granted EMC summary judgment of  
01:53 20 noninfringement against all asserted claims on the  
01:53 21 basis that PCI Express does not communicate PCI bus  
01:53 22 transactions as construed by the District Court.

01:53 23 And the Federal Circuit opinion on the  
01:53 24 right affirmed that. The Federal Circuit said that  
01:53 25 that determination flowed directly from the claim

01:53 1 constructions it adopted.

01:53 2 So to have ACQIS squarely lose on the  
01:53 3 issue of whether or not PCI Express communicates PCI  
01:53 4 bus transactions in EMC, at the Federal Circuit and at  
01:53 5 the District Court and to continue here would run  
01:54 6 completely -- to make that same assertion here would  
01:54 7 run completely afoul of collateral estoppel. These are  
01:54 8 identical issues.

01:54 9 On the next slide, Slide 7, ACQIS, in its  
01:54 10 response, tried to identify differences between these  
01:54 11 cases and the EMC cases. But none of the differences  
01:54 12 that ACQIS identified are material.

01:54 13 So, one, on the first row of the slide,  
01:54 14 ACQIS attempted to argue that EMC was procedurally  
01:54 15 different because it didn't address what information is  
01:54 16 in a PCI bus transaction. But the fact is that's an  
01:54 17 argument that they already made at the Federal Circuit  
01:54 18 and they lost. The Federal Circuit rejected it.

01:54 19 If you look on the right side of the  
01:54 20 slide, you can see and accept two excerpts from the  
01:54 21 oral argument. And you can see that at the oral  
01:54 22 argument the panel actively addressed the issue of  
01:55 23 whether or not all the elements -- or what elements  
01:55 24 were contained in a PCI bus transaction.

01:55 25 Judge said -- excuse me. Judge Chen said

01:55 1 to ACQIS' counsel, you know, there's no such thing as a  
01:55 2 PCI transaction that does not have control bits.  
01:55 3 Because part of the issue ACQIS was arguing was are  
01:55 4 there or are there not control bits within a PCI bus  
01:55 5 transaction.

01:55 6 So they were addressing exactly the  
01:55 7 question that ACQIS tries to raise as a point of  
01:55 8 distinction here. What information is in a PCI bus  
01:55 9 transaction?

01:55 10 Again, below that Judge Chen in  
01:55 11 responding to ACQIS says, that's the entire PCI bus  
01:55 12 transaction. When you've got a PCI bus transaction,  
01:55 13 it's not just selected pieces of the PCI bus  
01:55 14 transaction.

01:55 15 So the notion that the EMC is  
01:55 16 procedurally different because it didn't address what  
01:55 17 information was in a PCI bus transaction just doesn't  
01:55 18 square with the record.

01:55 19 ACQIS has also argued that some of the  
01:56 20 asserted claims in this case are different because in  
01:56 21 addition to requiring address and data bits of a PCI  
01:56 22 bus transaction, they also require byte-enable  
01:56 23 information in a PCI bus transaction. Well, that's  
01:56 24 also something that they raised at the Federal Circuit.

01:56 25 You can see on the right hand of the

01:56 1 bottom row of the slide that ACQIS, in fact, made that  
01:56 2 argument at the Federal Circuit and lost. And in  
01:56 3 addition to that, frankly, even if it were true, even  
01:56 4 if it were a new argument, it has no bearing on the  
01:56 5 issue of infringement, Your Honor. Because adding an  
01:56 6 additional claim limitation -- or adding an additional  
01:56 7 element of a claim limitation will not make it easier  
01:56 8 for ACQIS to show infringement here.

01:56 9 The Federal Circuit has already said that  
01:56 10 it cannot show that there's communication of a PCI bus  
01:56 11 transaction in PCI Express. So having it also need to  
01:56 12 show that there's communication of byte-enable  
01:57 13 information from a PCI bus transaction in PCI Express  
01:57 14 only makes ACQIS' job harder. It doesn't make it  
01:57 15 easier. It does not and should not affect Your Honor's  
01:57 16 determination of whether or not collateral estoppel  
01:57 17 applies here.

01:57 18 The third major difference and the  
01:57 19 so-called critical difference that ACQIS identifies  
01:57 20 between the issues in front of the EMC court and the  
01:57 21 issues before Your Honor is the notion that the patents  
01:57 22 here disclose transactions originating in serial rather  
01:57 23 than in parallel form and that the patents address and  
01:57 24 the claims address embodiments that don't have a PCI  
01:57 25 bus. That's something that ACQIS calls a critical

01:57 1 difference, but the fact is those same issues were in  
01:57 2 front of the EMC court.

01:57 3 So if you look at ACQIS -- on the left  
01:57 4 hand of the slide, Slide 8, we've got an excerpt from  
01:58 5 ACQIS' brief in the Federal Circuit at Page 47. There  
01:58 6 they specifically call out that the patent  
01:58 7 specifications in the EMC case, like this claim  
01:58 8 language in the EMC case, disclose embodiments that  
01:58 9 exclude a PCI local bus.

01:58 10 That, as shown in Figure 8 of the '415  
01:58 11 patent, one of the EMC patents, the PCI components  
01:58 12 connect directly to interface controllers or through  
01:58 13 other bus types without any intervening PCI local bus.

01:58 14 So the notion that because these patents  
01:58 15 in this case don't have a PCI local bus don't require a  
01:58 16 conversion from a parallel PCI bus transaction to a  
01:58 17 serial PCI bus transaction.

01:58 18 The notion that that's some sort of  
01:58 19 difference between the EMC case and this case is just  
01:58 20 not true. That information, that argument was  
01:58 21 presented to the Federal Circuit in EMC.

01:58 22 And we also have Figure 8. And you can  
01:58 23 see in Figure 8 ACQIS argued to the Federal Circuit  
01:59 24 that there was a direct connection. There was no PCI  
01:59 25 local bus in that figure, and therefore there's no need

01:59 1 to convert from parallel to serial in that figure.

01:59 2 But that's also something that was in  
01:59 3 front of the Federal Circuit and the Federal Circuit  
01:59 4 rejected. And there's no reason to identify there's a  
01:59 5 difference here.

01:59 6 Turning to Slide 9, Your Honor, so  
01:59 7 another point, and this sort of ties into that same  
01:59 8 argument, the notion that there's no PCI local bus,  
01:59 9 ACQIS argues that Judge Payne, when Judge Payne  
01:59 10 addressed collateral estoppel in the context of claim  
01:59 11 construction, recognized this difference.

01:59 12 But the fact is that -- so two things:  
01:59 13 First of all, that analysis that ACQIS cites from Judge  
01:59 14 Payne wasn't actually focused on collateral estoppel.  
01:59 15 The analysis that they specifically cite at Pages 15 to  
01:59 16 16 of their brief was really focused on an IPR  
02:00 17 disclaimer argument.

02:00 18 And so there Judge Payne was actually  
02:00 19 comparing just one of the patents from the EMC decision  
02:00 20 and one of the patents that was at issue in the IPR to  
02:00 21 the patents asserted here. So I -- that analysis, I  
02:00 22 think, is actually not quite on point here.

02:00 23 But the other point is the figures that  
02:00 24 Judge Payne pointed to as not being asserted in the  
02:00 25 patent that he was distinguishing are, in fact, present

02:00 1 in the EMC case.

02:00 2 So a lot of ACQIS' arguments here focus  
02:00 3 around these figures, Figures 8A, Figures 8B, Figures  
02:00 4 8C in its asserted patents. And you can see them on  
02:00 5 the left, the '768 patent. That's the figure that  
02:00 6 Judge Payne was pointing to, saying it wasn't in the  
02:00 7 patent that was at issue on the IPR.

02:00 8 But, in fact, those same figures were  
02:00 9 present in the patents asserted in EMC. So on the  
02:00 10 right you can see an excerpt from the '468 Patent, one  
02:01 11 of the patents asserted in EMC. It's got identical  
02:01 12 figures.

02:01 13 There is no material difference between  
02:01 14 the patents asserted here and the patents asserted in  
02:01 15 EMC.

02:01 16 And while ACQIS is pointing to Judge  
02:01 17 Payne's analysis, that analysis which was narrowly  
02:01 18 focused in this cite on collateral estoppel, just  
02:01 19 doesn't apply here. Because he didn't have the  
02:01 20 opportunity to consider all of the patents asserted in  
02:01 21 EMC.

02:01 22 He also, frankly, didn't have the  
02:01 23 opportunity to consider the arguments that ACQIS  
02:01 24 actually made in the EMC Federal Circuit appeal,  
02:01 25 because his decision was made back in the fall of last

02:01 1 year. And so now we know more. And, frankly, with the  
02:01 2 record that we have, have a better opportunity to look  
02:01 3 at whether collateral estoppel applies based upon the  
02:01 4 arguments that ACQIS has made rather than just looking  
02:01 5 at the thin slice that Judge Payne was able to look at  
02:01 6 at the time of claim construction.

02:01 7 Now, Your Honor, that's my point on  
02:02 8 identity of issues. I think all of the evidence shows  
02:02 9 that the issues are identical between the patents  
02:02 10 asserted in EMC and the infringement allegations  
02:02 11 asserted in EMC and the issues here. The next question  
02:02 12 we have is whether or not those issues were actually  
02:02 13 litigated. This is the second prong of collateral  
02:02 14 estoppel, one of two that are actually disputed.

02:02 15 Now, I don't think there's any real  
02:02 16 question that claim construction was actively disputed  
02:02 17 at the Federal Circuit in EMC. It was, in fact, the  
02:02 18 center of ACQIS' argument. If you look at Slide 5 --  
02:02 19 I'm sorry -- Slide 6 again, Your Honor. Renumbered  
02:02 20 these.

02:02 21 You can see that the Federal Circuit --  
02:02 22 ACQIS' opening previous brief to the Federal Circuit on  
02:03 23 the left identified the fact that they were challenging  
02:03 24 summary judgment of noninfringement on the basis of the  
02:03 25 Court's determination as construed by the District



02:03 1 Court. They were challenging the claim construction on  
02:03 2 appeal.

02:03 3 And, in fact, on the right you can see  
02:03 4 the Federal Circuit made a determination based on  
02:03 5 infringement flowing from the claim constructions. And  
02:03 6 then it goes on to say: Because ACQIS' arguments on  
02:03 7 appeal are directed only to those constructions.

02:03 8 So ACQIS' arguments on appeal were  
02:03 9 directed to claim construction. That is what they were  
02:03 10 challenging on appeal. That was fully litigated on  
02:03 11 appeal. And, Your Honor, that is enough to show full  
02:03 12 and fair litigation and show the issue was actually  
02:03 13 litigated.

02:03 14 If you look at the Nestlé court decision,  
02:03 15 the Nestlé USA v. Steuben Foods that we cited in our  
02:03 16 briefing, you'll see that the Federal Circuit held that  
02:03 17 fully litigating a claim construction on appeal, the  
02:03 18 opportunity to litigate a claim construction on appeal,  
02:03 19 that suffices as actual litigation for collateral  
02:04 20 estoppel.

02:04 21 Now, ACQIS says that because the claim  
02:04 22 construction was stipulated below that means it was not  
02:04 23 actually litigated.

02:04 24 And, Your Honor, that may have been true  
02:04 25 when they argued that to Judge Payne back in the fall.

02:04 1 That may have been true before the Federal Circuit  
02:04 2 opinion that the claim construction stipulated below in  
02:04 3 the District of Massachusetts might not have been  
02:04 4 enough.

02:04 5 I don't think it actually is because I  
02:04 6 think the record in the District of Massachusetts shows  
02:04 7 that they did, in fact, argue the stipulated  
02:04 8 construction. They fought over the meaning of the  
02:04 9 stipulated construction. It was ultimately rejected by  
02:04 10 the District Court.

02:04 11 But even if it were true that the  
02:04 12 stipulation in the District of Massachusetts made a  
02:04 13 difference, it doesn't matter here because now that  
02:04 14 they have fully litigated, they have actively  
02:04 15 litigated, they challenged the District Court's  
02:05 16 determination on the basis of claim construction in the  
02:05 17 Federal Circuit, there's no question that it's been  
02:05 18 actually litigated.

02:05 19 The second element that we're moving for  
02:05 20 collateral estoppel on, noninfringement, that was also  
02:05 21 actually litigated. That was actually litigated in the  
02:05 22 District Court. They put up the issue -- well, EMC  
02:05 23 asserted on a motion for summary judgment that PCI  
02:05 24 Express does not infringe the PCI bus transaction  
02:05 25 limitations and the other limitations addressed in the

02:05 1 Federal Circuit's decision.

02:05 2 The District Court decided that issue,  
02:05 3 decided it based on undisputed facts that PCI Express  
02:05 4 and products using PCI Express do not have address and  
02:05 5 data phases as required by PCI bus transactions, do not  
02:05 6 have control signals as required by PCI bus  
02:05 7 transactions and do not have parity signals as required  
02:05 8 by PCI bus transactions, and granted summary judgment  
02:06 9 on that issue. That was actually litigated.

02:06 10 And what's more, that issue was not even  
02:06 11 appealed by ACQIS. So as you can see on Slide 6,  
02:06 12 ACQIS' arguments on appeal were actually directed just  
02:06 13 to claim construction. They did not contest the  
02:06 14 finding below, that under those constructions there was  
02:06 15 noninfringement. That's just not something they raised  
02:06 16 on appeal.

02:06 17 So that was actually litigated. It is  
02:06 18 final.

02:06 19 Now, ACQIS has its arguments to say that  
02:06 20 these issues were not actually litigated. If you turn  
02:06 21 to Slide 10, we address those. In fact -- so I already  
02:06 22 briefly talked about the stipulated constructions.

02:06 23 In addition to the fact that, in fact,  
02:06 24 they were fully litigated, ACQIS also raised that issue  
02:06 25 at the Federal Circuit. So you can see on the first

02:07 1 row of Slide 10 we're quoting from ACQIS' brief at Page  
02:07 2 31. They raised the issue that they say that the  
02:07 3 District Court construed the PCI bus transaction term  
02:07 4 based on a purported agreement about the meaning of the  
02:07 5 term. That's something they raised at the Federal  
02:07 6 Circuit and the Federal Circuit rejected it. There's  
02:07 7 no reason for Your Honor to address that argument again  
02:07 8 here.

02:07 9 If you look to the second row, ACQIS  
02:07 10 argues that the EMC decision didn't consider the  
02:07 11 difference between a PCI bus transaction and physical  
02:07 12 signals used to convey a transaction. Well, in fact,  
02:07 13 that was another issue that was raised on appeal and  
02:07 14 that the Federal Circuit rejected.

02:07 15 And so on the right of the slide you can  
02:07 16 see another excerpt from the transcript of the  
02:07 17 argument. Judge Chen talks about the difference  
02:07 18 between transaction layers and physical layers in  
02:07 19 ACQIS' briefing.

02:07 20 And goes on to say: There's nothing in  
02:08 21 the PCI local bus specification that talks about these  
02:08 22 two kinds of layers and distinguishing signals based  
02:08 23 upon whether they're in the transaction layer versus  
02:08 24 the physical layer; is that right?

02:08 25 And ACQIS says: The words "physical" and

02:08 1 "transaction layer" are not used in that particular  
02:08 2 specification.

02:08 3 This is something that, again, they  
02:08 4 argued in front of the Federal Circuit. They lost.  
02:08 5 It's not something that is a difference here, not  
02:08 6 something that shows it wasn't actually litigated. It,  
02:08 7 in fact, is a point that shows it was actually  
02:08 8 litigated.

02:08 9 And then finally, ACQIS argues that  
02:08 10 there's factual issues that preclude judgment of  
02:08 11 noninfringement here. That there's issues that need to  
02:08 12 be dived into as far as expert analysis. That the  
02:08 13 experts need to weigh in as to whether or not PCI  
02:08 14 Express can communicate a PCI bus transaction under  
02:08 15 these constructions.

02:08 16 Again, that's an argument that ACQIS  
02:09 17 argued at the Federal Circuit and that the Federal  
02:09 18 Circuit rejected.

02:09 19 You can see the bottom right of Slide 10  
02:09 20 ACQIS says: If this Court just looks at the intrinsic  
02:09 21 record and thinks that it's absolutely clear that's  
02:09 22 what a PCI bus transaction means, then that is what Mr.

02:09 23 Perry is suggesting requires affirmance.  
02:09 24 I just don't think that the Court can get there. And  
02:09 25 for the specific reason we talked about, there has to

02:09 1 be a remand for some sort of discussion of expert  
02:09 2 testimony.

02:09 3 So they laid it out for the Federal  
02:09 4 Circuit. They said, if you don't think that we need to  
02:09 5 get to expert testimony, then just affirm. But we  
02:09 6 think that you need to get to expert testimony and you  
02:09 7 can remand.

02:09 8 And the expert -- the Federal Circuit  
02:09 9 answered that implicit question by affirming the  
02:09 10 decision. It did not remand for further consideration  
02:09 11 of expert testimony. It had the opportunity to do so.  
02:09 12 ACQIS asked it to do so. And the Federal Circuit  
02:09 13 rejected that argument.

02:09 14 So the notion that factual issues, or the  
02:09 15 need for expert testimony precludes an issuance of  
02:10 16 judgment of noninfringement here just does not hold  
02:10 17 water. That's something that's already been rejected.

02:10 18 Now, Your Honor, the fact is these claims  
02:10 19 have been litigated fully and fairly. ACQIS has  
02:10 20 litigated its claims against PCI Express for more than  
02:10 21 a decade. It has had every opportunity in the Eastern  
02:10 22 District of Texas, in the District of Massachusetts and  
02:10 23 finally at the Federal Circuit, to make its arguments  
02:10 24 and to try to show that PCI Express, products using PCI  
02:10 25 Express, communicate PCI bus transactions or address

02:10 1 and data bits of PCI bus transactions or encoded serial  
02:10 2 bit streams of PCI bus transactions as required by its  
02:10 3 patents.

02:11 4 It has lost. And now that it has lost,  
02:11 5 the Court should not permit ACQIS to continue to  
02:11 6 relitigate these same issues here and waste both the  
02:11 7 parties' and the Court's time and resources on  
02:11 8 arguments when the Federal Circuit has already spoken.

02:11 9 As Mr. Ravel said, we're past the close  
02:11 10 of fact discovery. We're now in the midst of expert  
02:11 11 reports. Now is the time to narrow the case. Your  
02:11 12 Honor can do that. Your Honor can narrow the case now  
02:11 13 by rejecting these claims that have already been lost  
02:11 14 and focus it on the remaining issues that have not  
02:11 15 already been litigated, which are ACQIS' allegations  
02:11 16 against USB 3.

02:11 17 Against Lenovo defendants that leaves  
02:11 18 three patents, nine asserted claims. That's an actual  
02:11 19 manageable number. That's where the parties and that's  
02:11 20 where the Court should be focusing their attention.

02:11 21 And so for those reasons, Your Honor,  
02:11 22 defendants submit that collateral estoppel applies and  
02:12 23 Your Honor should adopt the Federal Circuit's claim  
02:12 24 constructions and, as a matter of collateral estoppel,  
02:12 25 should grant judgment on the pleadings that there is no

02:12 1 infringement by products using PCI Express of ACQIS'  
02:12 2 patents.

02:12 3 THE COURT: A response? Are you done for  
02:12 4 everyone on this side?

02:12 5 MR. SEDDON: So --

02:12 6 THE COURT: Mr. Siegmund?

02:12 7 MR. SIEGMUND: Your Honor, we have a  
02:12 8 slightly different motion procedurally. I'm not going  
02:12 9 to go through --

02:12 10 THE COURT: Happy to take yours up.  
02:12 11 Let's take all of the defendants up, and then I'll hear  
02:12 12 from the plaintiff.

02:12 13 MR. SIEGMUND: Okay. Great.

02:12 14 MR. SEDDON: Thank you, Your Honor.

02:12 15 MR. SIEGMUND: I'm going to hand out some  
02:12 16 slides real quick, Judge.

02:13 17 May it please the Court?

02:13 18 THE COURT: Yes, sir.

02:13 19 MR. SIEGMUND: Mark Siegmund on behalf of  
02:13 20 defendant Wiwynn.

02:13 21 And, Judge, we have a slightly different  
02:13 22 motion here. Our motion is a motion for  
02:13 23 reconsideration of your prior claim construction order  
02:13 24 in this case. And we are simply asking for the Court  
02:13 25 to reconsider its construction in light of the Federal



02:13 1 Circuit's opinion, as well as the decision in the EMC.

02:13 2 Which as you already heard, Judge, the  
02:13 3 Federal Circuit affirmed not only the motion for  
02:13 4 summary judgment granted against ACQIS in the District  
02:13 5 of Massachusetts, but they also went out of their way  
02:13 6 to specifically adopt those claim constructions.

02:13 7 So all we're asking Your Honor to do,  
02:13 8 from Wiwynn's perspective, is to adopt the same  
02:13 9 constructions consistent with the Federal Circuit.

02:13 10 Alternatively, as you already heard from  
02:13 11 Lenovo's counsel, we also agree that issue -- issue  
02:14 12 preclusion collateral estoppel apply in this case and  
02:14 13 prevent ACQIS from relitigating these issues that  
02:14 14 they've already litigated for some time.

02:14 15 So very briefly, Your Honor, turning to  
02:14 16 my slides here, as Your Honor might remember, prior to  
02:14 17 the claim construction actually in this case before  
02:14 18 Your Honor, the District Court of Massachusetts did  
02:14 19 interpret several claims that are at issue in this case  
02:14 20 related to the PCI standard. And then it granted that  
02:14 21 motion of noninfringement.

02:14 22 And during that time ACQIS moved to  
02:14 23 appeal that to the Federal Circuit. And at that time,  
02:14 24 Judge, if you might remember, we -- all the defendants  
02:14 25 moved Your Honor to stay the case pending the outcome

02:14 1 of the Federal Circuit appeal.

02:14 2 Your Honor declined our invitation. But  
02:14 3 what you did say, and I have the quote pulled up on  
02:14 4 Slide 3, is: Should the Federal Circuit address the  
02:15 5 appeal during the course of this litigation, the Court  
02:15 6 can make the necessary modifications or hear pretrial  
02:15 7 arguments concerning the claim construction.

02:15 8 And, Judge, that's exactly what happened.  
02:15 9 I think the chickens have finally come home to roost.  
02:15 10 The Federal Circuit has ruled in this case. It  
02:15 11 specifically adopted what the District Court in  
02:15 12 Massachusetts did. And we simply believe that Your  
02:15 13 Honor should adopt that same construction.

02:15 14 And if you look at Slide 4, Judge, it's  
02:15 15 very clear, even though it was a brief opinion by the  
02:15 16 Federal Circuit, they, number one, importantly,  
02:15 17 affirmed the motion for summary judgment. And number  
02:15 18 two, they adopted the District Court's claim  
02:15 19 construction on all terms relating to PCI.

02:15 20 And that is really the point, Judge.

02:15 21 I think you heard enough on issue  
02:15 22 preclusion, so I'm not going to go into that  
02:15 23 whatsoever.

02:15 24 The only thing I will point out in terms  
02:15 25 of whether this issue was actually litigated before the

02:16 1 Federal Circuit is you have to look no further than  
02:16 2 ACQIS' brief and specifically -- I think it's Page 2 or  
02:16 3 3 of their brief -- where they state the issues of the  
02:16 4 case before the Circuit. They explicitly call out each  
02:16 5 of the terms at issue.

02:16 6 And as Your Honor heard from Mr. Seddon,  
02:16 7 they argued about this ad nauseam, spilled a lot of ink  
02:16 8 discussing these different terms.

02:16 9 So with that, Your Honor, unless you have  
02:16 10 any specific questions about our motion or any issue,  
02:16 11 preclusion issue, that's all we have from Wiwynn's  
02:16 12 perspective.

02:16 13 THE COURT: And so your client is aligned  
02:16 14 with what I heard in the first case?

02:16 15 MR. SIEGMUND: Yes, sir. That's correct.

02:16 16 THE COURT: Got it. Anyone else for  
02:16 17 defendants?

02:16 18 MR. BURESH: Very briefly, Your Honor.

02:16 19 THE COURT: Sure.

02:16 20 MR. BURESH: Eric Buresh on behalf of  
02:16 21 ASUSTek. If it pleases the Court.

02:16 22 Your Honor, this is a very short forest  
02:17 23 and trees, and I want to focus solely on claim  
02:17 24 construction. The framing of ASUSTek's motion is again  
02:17 25 issue preclusion or collateral estoppel. We directed

02:17 1 it solely to the issue of claim construction.

02:17 2 I want to focus on PCI bus transaction.  
02:17 3 Every court that has looked at this case has construed  
02:17 4 that term, "PCI bus transaction."

02:17 5 Your Honor, of all the courts that have  
02:17 6 considered that term from this family of patents, this  
02:17 7 Court is the only one to include the phrase "or  
02:17 8 backwards compatible with." And specifically, the  
02:17 9 construction is from this Court: Peripheral bus  
02:17 10 transaction means a transaction in accordance with or  
02:17 11 backwards compatible with the industry standard PCI  
02:17 12 local bus specification.

02:17 13 That phrase "or backwards compatible  
02:17 14 with" is unique to this Court. It was not present in  
02:17 15 the construction from the Eastern District of Texas.  
02:17 16 It was not present in the construction from the  
02:17 17 District of Massachusetts. And most importantly, it  
02:18 18 was not present in the de novo construction or de novo  
02:18 19 review of the construction by the Federal Circuit.

02:18 20 From ASUSTek's perspective, to not  
02:18 21 correct that construction at this point leads us on a  
02:18 22 fool's errand. We already know the construction the  
02:18 23 Federal Circuit is going to adopt, so continuing to  
02:18 24 litigate this case with the phrase "or backwards  
02:18 25 compatible" in the construction is going to take us

02:18 1 nowhere. It's going to take us ultimately to a Federal  
02:18 2 Circuit reversal. And we know that because the writing  
02:18 3 is already on the wall.

02:18 4 So we would ask at a minimum that that  
02:18 5 construction be corrected. And then we defer to Lenovo  
02:18 6 counsel's argument with respect to the impact of that  
02:18 7 correction.

02:18 8 Thank you, Your Honor.

02:18 9 THE COURT: Anything else from  
02:18 10 defendants?

02:18 11 MR. SIEGMUND: No, Your Honor. Not from  
02:18 12 Wiwynn.

02:18 13 THE COURT: A response?

02:19 14 MR. COLLARD: Your Honor, may I approach?  
02:19 15 I have some slides for you guys.

02:19 16 THE COURT: Sure.

02:19 17 MR. COLLARD: May it please the Court.

02:19 18 This is Case Collard of Dorsey & Whitney  
02:19 19 for ACQIS.

02:19 20 Your Honor, just so you know, the slides  
02:19 21 that I gave you are our claim construction slides.  
02:19 22 They're not new slides. So those are the slides we  
02:19 23 used at claim construction, but I'm going to reference  
02:19 24 a couple of those today in my discussion.

02:19 25 I'm going to start where counsel for

02:20 1 ASUSTek left off. It was very emphatic to say every --  
02:20 2 you're the only court out of every court that's looked  
02:20 3 at this that found that this is backwards compatible or  
02:20 4 put that in the claim construction.

02:20 5 And that leads me actually to a little  
02:20 6 bit of a thought experiment, Your Honor. So that what  
02:20 7 if there is collateral estoppel? And what if that's  
02:20 8 where we're starting from and then the question is:  
02:20 9 What's really the difference between the construction  
02:20 10 that you ordered that includes the words "or backwards  
02:20 11 compatible" and the construction that defendants claim  
02:20 12 we are collaterally estopped and must use?

02:20 13 And it's really only those words, as  
02:20 14 ASUS' counsel pointed out. "Or backwards compatible."

02:20 15 And adding those words is absolutely  
02:20 16 consistent with every court that's ever looked at this.  
02:21 17 And I think that that is a critical point, Your Honor.

02:21 18 And I -- so I want to take you right  
02:21 19 there. And the first court to look at this was Judge  
02:21 20 Davis in the Eastern District of Texas. And this is  
02:21 21 Slide 10 of the claim construction slides that I just  
02:21 22 handed you. This is from 2011. This is 11 years ago,  
02:21 23 Your Honor.

02:21 24 PCI bus transaction allows compatibility  
02:21 25 with PCI legacy devices when replacing the conventional

02:21 1 parallel PCI bus with serial architecture. So it's  
02:21 2 talking about, in principle, backwards incompatibility  
02:21 3 there.

02:21 4 And then another quote from his claim  
02:21 5 construction order: Likewise, one of skill in the art  
02:22 6 would conclude that the term "PCI bus" in the patent is  
02:22 7 not specific to a PCI local bus standard form of  
02:22 8 architecture. And that a PCI bus transaction is used  
02:22 9 merely -- to merely designate an ability to communicate  
02:22 10 with a legacy device, i.e., an interconnected  
02:22 11 peripheral that is designed to operate over a  
02:22 12 conventional PCI local bus so that backward  
02:22 13 incompatibility within installed base of peripherals is  
02:22 14 assured.

02:22 15 So I'm afraid contrary to counsel for  
02:22 16 ASUSTek, you know, one of the very first times this  
02:22 17 term was addressed, backwards incompatibility was an  
02:22 18 issue that was found by the Court.

02:22 19 Well, but what about EMC? The words "or  
02:22 20 backwards compatibility" didn't appear there. But  
02:22 21 just -- I think it was just -- gosh, maybe two days ago  
02:22 22 we got a transcript filed by Lenovo of the oral  
02:22 23 argument, I assume for our reference today.

02:23 24 So what did EMC think of their  
02:23 25 construction and what it meant? This is EMC's counsel

02:23 1 talking about their claim construction. This is Docket  
02:23 2 No. 193-1, Page 16 of 29 on the filing. And, again,  
02:23 3 EMC's counsel: The reason this inventor adopted the  
02:23 4 standard was for interoperability. This was for  
02:23 5 backwards compatibility with existing buses and  
02:23 6 peripheral devices.

02:23 7 EMC thought that the claim construction  
02:23 8 included backwards compatibility. So we've got now  
02:23 9 book-ended 11 years ago and two months ago, the idea of  
02:23 10 backwards compatibility is consistent with what has  
02:23 11 been found by other courts.

02:23 12 So that leads me to what Mr. Seddon ended  
02:24 13 with and something that Wiwynn raised in their brief,  
02:24 14 and that was a accusation, from Wiwynn at least, saying  
02:24 15 that ACQIS is forum shopping and a claim from Lenovo's  
02:24 16 counsel that ACQIS has tried for ten years to get this  
02:24 17 position and lost.

02:24 18 Well, that's not true, Your Honor.  
02:24 19 Because ACQIS has won at trial against IBM asserting  
02:24 20 infringement against products that included PCI Express  
02:24 21 under a claim construction with these claims that say  
02:24 22 PCI bus transaction, these type of claims that say PCI  
02:24 23 bus transaction.

02:24 24 So, Your Honor, that's not true that --  
02:24 25 that ACQIS has had -- you know, been trying this



02:24 1 position for ten years and lost.

02:24 2 And then I want to make another general  
02:24 3 point, and that is that Lenovo was very interested in  
02:24 4 the potential benefits of narrowing this case.

02:25 5 Well, Your Honor, you'll notice if you  
02:25 6 look at the briefing closely that at the beginning the  
02:25 7 claim numbers were, you know, up near 100 claims  
02:25 8 asserted. Well, as directed by Your Honor, we  
02:25 9 conferred and we narrowed our claims significantly.  
02:25 10 50 percent, we narrowed claims at the first narrowing.  
02:25 11 Claims and patents, 50 percent.

02:25 12 It was a little less than 50 percent with  
02:25 13 Wiwynn based on some specifics about how -- what  
02:25 14 patents were asserted against them, but I think for  
02:25 15 them it was maybe a third or 35 percent.

02:25 16 You shouldn't decide this case based on  
02:25 17 some potential benefit of narrowing. When the time  
02:25 18 comes, as is already on the case -- the Court's  
02:25 19 scheduling order, ACQIS will confer. ACQIS will narrow  
02:25 20 again as necessary. There's no need for any artificial  
02:25 21 narrowing if the law doesn't call for it.

02:25 22 And so that's where we are now. The law  
02:26 23 doesn't call for it. Defendants are overstating how  
02:26 24 much has changed. They've already been in front of  
02:26 25 this Court arguing that collateral estoppel applies

02:26 1 from the EMC's District Court order, and now they're  
02:26 2 arguing it applies from the Federal Circuit  
02:26 3 affirmation.

02:26 4 But they don't claim that the Federal  
02:26 5 Circuit affirmation really changes the substance of the  
02:26 6 EMC District Court order. They can't. They agree with  
02:26 7 the content of the EMC District Court order. If it  
02:26 8 changed, they would have told you that or ACQIS would  
02:26 9 have told you that. But it didn't.

02:26 10 And, Your Honor, they already argued  
02:26 11 every one of these points at claim construction. They  
02:26 12 argued that it was final. They argued that it was  
02:26 13 litigated, that it was necessary and that the issues  
02:26 14 were identical. They've already argued those exact  
02:26 15 issues and you already ruled on this before.

02:26 16 And one thing that I want to make sure is  
02:27 17 crystal clear in underlying your decision is that there  
02:27 18 is zero overlap in the patents remaining in this case  
02:27 19 and the patents that were at issue in EMC. Not one of  
02:27 20 the seven patents that was at issue in -- is -- that  
02:27 21 remains at issue in this case across the three  
02:27 22 defendants was at issue in EMC.

02:27 23 And I think that counsel for Lenovo took  
02:27 24 a -- you know, their argument was very careful. But we  
02:27 25 need to really listen carefully too. And everybody has

02:27 1 gone through the elements of collateral estoppel, but I  
02:27 2 think there's not -- there's actually more than four.  
02:27 3 Because actually litigated has four of its own  
02:27 4 elements.

02:27 5 And, Your Honor, this is from your  
02:27 6 decision in SmileDirectClub on collateral estoppel.  
02:27 7 This was cited by Wiwynn in their motion and where you  
02:28 8 cite in re Katy. And actually litigated has four  
02:28 9 subparts. Raised, but that's not it. It's not just  
02:28 10 raised. Raised, contested, submitted and determined.

02:28 11 And that is where everybody on the side  
02:28 12 of defendants is blurring the lines. If something was  
02:28 13 raised, it was actually litigated. No matter where it  
02:28 14 was raised, no matter under what circumstance, it was  
02:28 15 raised. If something was raised and contested, oh, it  
02:28 16 was actually litigated.

02:28 17 But it has to be all four of those. It  
02:28 18 has to be raised, contested, submitted and determined.  
02:28 19 And the key questions that Your Honor has weighed in on  
02:28 20 already and already determined, and that Judge Payne  
02:28 21 has looked at, were -- they don't meet all four of  
02:28 22 those prongs of actually litigated from in re Katy and  
02:28 23 SmileDirectClub. I may have said Smile Club Direct.  
02:29 24 I'm not a member.

02:29 25 So I think that that has led them to see

02:29 1 some ghosts in this Federal Circuit order. Which, as  
02:29 2 you know, is two paragraphs. It is nonprecedential per  
02:29 3 curiam because they act as if every argument that ACQIS  
02:29 4 made on appeal and at oral arguments was considered in  
02:29 5 detail and rejected with a reasoned opinion. But  
02:29 6 that's not the case.

02:29 7 And this is worse than even trying to  
02:29 8 point to dicta. You know, sometimes you might say,  
02:29 9 well, they talked about this but it wasn't essential to  
02:29 10 their ruling. These are things that were simply never  
02:29 11 addressed by the Federal Circuit in their opinion.

02:29 12 And the two most important examples are  
02:29 13 the two most key issues. The fact that some of these  
02:29 14 claim constructions were stipulated by the parties and  
02:29 15 therefore not litigated. And that the District Court  
02:29 16 found that ACQIS had waived arguments by raising them  
02:29 17 in an untimely way and said that they would not  
02:30 18 consider them.

02:30 19 And so defendants are trying to say,  
02:30 20 well, ACQIS argued about those issues in its brief at  
02:30 21 the Federal Circuit. And they became actually  
02:30 22 litigated. But that isn't the case, Your Honor.  
02:30 23 Stipulated constructions can't become unstipulated on  
02:30 24 appeal.

02:30 25 And we've got -- its Moore versus

02:30 1 Standard Register. The record on -- this is a Federal  
02:30 2 Circuit case, 229 F.3d 1091. The record on appeal is  
02:30 3 generally limited to that which was before the District  
02:30 4 Court.

02:30 5 And we have that case law in our brief as  
02:30 6 well on Page 14, additional case law on that, that the  
02:30 7 Federal Circuit only decides what they discuss in their  
02:30 8 opinion. That's the Exxon and Roche cases.

02:30 9 So when you walk through the  
02:30 10 requirements, you'll see that collateral estoppel and  
02:30 11 stare decisis don't apply here. And I think it's  
02:30 12 important to put some context on why Judge Burroughs  
02:30 13 did another claim construction in this case after Judge  
02:30 14 Davis had already done one. And that was because the  
02:31 15 case had been stayed to allow for an IPR and she was  
02:31 16 going to say, is there any prosecution history estoppel  
02:31 17 from the IPR?

02:31 18 For PCI bus transaction, there was no  
02:31 19 prosecution history estoppel. It was construed the  
02:31 20 same way as previously in Judge Davis. The use of the  
02:31 21 word "transaction" was agreed upon by the parties, the  
02:31 22 inclusion of the local PCI bus specification was  
02:31 23 included by the parties.

02:31 24 And the only part that was -- all four of  
02:31 25 those -- raised, contested, submitted and determined

02:31 1 with respect to that construction was whether or not a  
02:31 2 parallel PCI bus must be present as a part of the  
02:31 3 construction. Nothing to do with what the -- was  
02:31 4 argued at the Federal Circuit or what's at issue in our  
02:31 5 case. But that's the only piece that has -- meets all  
02:31 6 four of those elements.

02:31 7 Encoded serial PCI bus transactions --  
02:31 8 sorry. Encoded stream of serial PCI bus transactions,  
02:31 9 that was found to have prosecution history estoppel  
02:31 10 based on the IPR. But, Your Honor, that's a different  
02:32 11 patent with a different specification.

02:32 12 And that's what Judge Payne found.  
02:32 13 That's why, you know, Mr. Seddon was saying, oh, well,  
02:32 14 that was about prosecution history estoppel. Well,  
02:32 15 yeah. That was the basis for that claim construction,  
02:32 16 was prosecution history estoppel.

02:32 17 Here's the question that's never been  
02:32 18 litigated: Does that prosecution history estoppel,  
02:32 19 based on the reexamination of the '873 patent, extend  
02:32 20 to other patents? Never litigated, Your Honor.  
02:32 21 Nobody's ever even submitted that question. That's not  
02:32 22 a question that was in front of the EMC court because  
02:32 23 it didn't need to be. The patent that was at issue  
02:32 24 there was also asserted in that case. So that's a  
02:32 25 question that's never been actually litigated.

02:32 1 And then finally, the "communicating"  
02:32 2 term, that was also stipulated, Your Honor. The  
02:32 3 communicating specific bits of the construction. And  
02:32 4 that was also -- that stipulation was based on the  
02:32 5 construction that had been used in the IPRs. And so it  
02:33 6 was also based on kind of a prosecution history  
02:33 7 estoppel argument.

02:33 8 So we talked about, you know, collateral  
02:33 9 estoppel doesn't apply because those prongs of the  
02:33 10 argument are not met. And we've talked about, well,  
02:33 11 even if it did, your construction on PCI bus  
02:33 12 transaction is consistent.

02:33 13 And I think it's important to recognize  
02:33 14 that the rules on claim construction across patent  
02:33 15 families are not as rigid as the defendants claim. The  
02:33 16 cases that they cite are about being consistent.

02:33 17 And I think, as I showed you, EMC's own  
02:33 18 interpretation of the last -- of the most recent  
02:33 19 construction in the EMC case, Judge Davis' orders on  
02:33 20 prior claim constructions, it's consistent across over  
02:33 21 a decade that backwards compatibility is part of the  
02:34 22 construction.

02:34 23 And so Judge Payne, Your Honor, you can  
02:34 24 read Judge Payne and his order. I'm sure you have.  
02:34 25 I'm not going to spend a lot of time on that because we

02:34 1 hit that pretty heavily in our papers. But I think  
02:34 2 Judge Payne, he zeros in on the material differences.  
02:34 3 And the parties agreed on the use of the word  
02:34 4 "transaction" in EMC. So the Court never reached what  
02:34 5 that was going to mean.

02:34 6 I want to -- I just do want to point out  
02:34 7 in our slides, Slides 31 and 32, the parties agreed on  
02:34 8 transaction. So Judge Burroughs declined to address it  
02:34 9 when it became a dispute later.

02:34 10 And I think that the -- you know, the --  
02:34 11 31 has the highlight here as an initial matter. ACQIS'  
02:34 12 attempt to reduce the import of the specification is  
02:35 13 untimely.

02:35 14 And then how she closes this -- this is  
02:35 15 on Slide 32: There is no need to now construe a  
02:35 16 readily understandable term that ACQIS itself thought  
02:35 17 clear when offering proposed constructions of related  
02:35 18 terms, and the Court will not do so.

02:35 19 They didn't do it. It wasn't determined.  
02:35 20 The Court said, I'm not going to determine this.

02:35 21 That's the fourth piece of actually  
02:35 22 litigated, Your Honor.

02:35 23 So the question of what is a PCI bus  
02:35 24 transaction was not actually litigated. And Judge  
02:35 25 Payne identified that exact issue. It's actually the



02:35 1 next couple of slides in our deck, 34 and 35, that are  
02:35 2 quoting from his reasoned claim construction order.

02:35 3 So your construction is consistent with  
02:35 4 that, with Judge Payne's. And it zeros in on the main  
02:35 5 issue that wasn't litigated and gives guidance on that  
02:35 6 key issue that has never been litigated before.

02:35 7 So, you know, I do want to briefly run  
02:36 8 through the collateral estoppel elements with respect  
02:36 9 to PCI bus transactions. You know, these are not the  
02:36 10 same patents or claims. I will -- I promise I'll stop  
02:36 11 repeating that pretty soon, Your Honor, but it's seven  
02:36 12 different patents and it's different claims. And  
02:36 13 they're not identical claim limitations either.

02:36 14 Throughout -- peppered throughout  
02:36 15 everybody's arguments, peppered throughout their slides  
02:36 16 and their briefs are lots of "near-identical,"  
02:36 17 "substantially the same." I think Wiwynn's headings in  
02:36 18 their briefs are "essentially the same."

02:36 19 But the law on that is that even though  
02:36 20 they're related families, it doesn't mean that the  
02:36 21 issues are the same. So the -- they're near identical.  
02:36 22 They're not identical.

02:36 23 And then, you know, I've talked quite a  
02:36 24 bit about the issue. They try to alie the fact that  
02:37 25 these patents, claims, claim terms and the limitations

02:37 1 are not identical by saying, well, the issue is  
02:37 2 identical. But it's not, Your Honor, because the issue  
02:37 3 is what sort of information qualifies as a transaction  
02:37 4 under the PCI local bus specification, and that has  
02:37 5 still not been litigated.

02:37 6 I talked a little bit about the four  
02:37 7 elements, so I won't go through those. But the  
02:37 8 stipulation means that -- at the trial court means that  
02:37 9 it wasn't litigated at the trial court. And there's --  
02:37 10 and it wasn't litigated at the Federal Circuit.

02:37 11 And I -- you know, I've looked at the  
02:37 12 Nestlé case, which is a different situation, Your  
02:37 13 Honor. It's distinguishable because in that case --  
02:37 14 it's a really short opinion, Your Honor. But the  
02:37 15 Nestlé case, they say, well, we construed this before  
02:37 16 on appeal and that counts as actually litigated because  
02:37 17 we went through it and we looked at the intrinsic  
02:37 18 evidence and we did all this work.

02:37 19 But it doesn't address a situation with a  
02:38 20 stipulated construction or where there are a waiver of  
02:38 21 arguments.

02:38 22 So -- and they also point to their own  
02:38 23 analysis. They don't say, well, they raised this in  
02:38 24 oral arguments, so that means it was litigated; or they  
02:38 25 put this in their brief, so that means it was

02:38 1 litigated.

02:38 2           Raised is only the first step on finding  
02:38 3 something was actually litigated, and that's what  
02:38 4 defendants want you to do, is just say, well, just  
02:38 5 because this was raised, it was actually litigated,  
02:38 6 even if it wasn't determined.

02:38 7           For the "communicating specific bits of  
02:38 8 PCI bus transaction," the term at issue is different.  
02:38 9 And, you know, there's one difference too about the  
02:38 10 specific bits. There's a byte-enable bit. That's  
02:38 11 never been addressed. That's not been raised,  
02:39 12 contested, submitted and determined how to construe  
02:39 13 claims that talk about transmitting byte-enable bit  
02:39 14 instead of the whole entire PCI bus transaction.

02:39 15           And there's no dispute. That was a  
02:39 16 stipulated construction, so that was not in dispute.

02:39 17           And one of the things that in their  
02:39 18 papers, defendants try to distinguish the Pfizer case  
02:39 19 on stipulated constructions by saying, well, the  
02:39 20 stipulation in that case was only for the purposes of  
02:39 21 that litigation.

02:39 22           The stipulation in the EMC case was only  
02:39 23 for the purposes of that litigation. ACQIS didn't  
02:39 24 stipulate for all time or with all parties. The only  
02:39 25 other party there to stipulate with was EMC.

02:39 1 And this is another issue related to  
02:39 2 prosecution history estoppel, and no one's ever  
02:39 3 litigated whether the prosecution history estoppel and  
02:39 4 the construction used there should extend to other  
02:39 5 patents.

02:39 6 And again, Judge Payne looked at this and  
02:39 7 we have a slide on that. Slide 54 is the slide on the  
02:40 8 specific bits and why there's no prosecution history  
02:40 9 estoppel and there need not be any collateral estoppel.

02:40 10 And it's very similar for the claims on  
02:40 11 serial and encoded, and I think that one of the key  
02:40 12 issues that Judge Payne found is that there are -- is a  
02:40 13 different disclosure in the patents that we're looking  
02:40 14 at that have Figures 8A and 8B, which have never -- the  
02:40 15 question of whether or not the '873 patent, which was  
02:40 16 the patent in IPR, and the -- with the images in that  
02:40 17 patent specification, does that prosecution history  
02:40 18 estoppel on serial and encoded extend to patents that  
02:40 19 have Figures 8A and 8B, which relate directly to that  
02:40 20 issue about whether or not there is a parallel PCI bus  
02:41 21 transaction that's converted into serial?

02:41 22 I know that Mr. -- I think I dropped my  
02:41 23 Lenovo slides. Excuse me.

02:41 24 I know that Mr. Seddon brought that up on  
02:41 25 Slide 9, but he's pointing to the '486 patent. He's

02:41 1 not pointing to the patent that was actually in the  
02:41 2 prosecution history estoppel.

02:41 3 And even if that patent was asserted in  
02:41 4 EMC, that question was never raised. So it wasn't  
02:41 5 actually litigated. Nobody raised the question and  
02:41 6 said, huh, does prosecution history estoppel extend to  
02:41 7 this one that has, you know, for the '468, Figure 19  
02:41 8 and Figure 20?

02:41 9 So that issue wasn't raised, and  
02:41 10 collateral estoppel shouldn't apply.

02:41 11 Your Honor, I'm not going to actually  
02:41 12 address any of the procedural issues that Mr. Ravel  
02:41 13 addressed. But if you have any questions on those,  
02:42 14 that's fine, but I think those have been covered in our  
02:42 15 brief. But if you are considering this through the  
02:42 16 motion for judgment on the pleadings lens, then that  
02:42 17 means you must resolve any disputed question of fact in  
02:42 18 ACQIS' favor.

02:42 19 And so, you know, I think right down the  
02:42 20 line that the issue preclusion doesn't apply because  
02:42 21 the test isn't met. But that's especially true when  
02:42 22 considering this through a lens favorable to ACQIS.

02:42 23 Thank you, Your Honor. That's all I have  
02:42 24 at this time.

02:42 25 MR. SEDDON: Your Honor, if I may have a

02:42 1 short rebuttal?

02:42 2 THE COURT: Sure.

02:42 3 MR. SEDDON: Jeff Seddon of Desmarais LLP  
02:42 4 for the defendants, particularly the Lenovo defendants,  
02:42 5 Your Honor. May it please the Court.

02:43 6 I want to address ACQIS' presentation.  
02:43 7 There's a number of things I want to address. I'm  
02:43 8 going to start focusing on the issue of the identity of  
02:43 9 the issues.

02:43 10 I think the main point that ACQIS made  
02:43 11 there is that these are different patents and different  
02:43 12 claims, but, Your Honor, as we've said in our brief and  
02:43 13 as I think we've shown from the actual limitations that  
02:43 14 are at issue, you can look at them side by side on  
02:43 15 Slide 4 of our slides. In fact, there are no material  
02:43 16 differences here.

02:43 17 And while ACQIS says that these are  
02:43 18 different claims and different patents, that's really  
02:43 19 as far as they go. They don't identify differences  
02:43 20 with regard to these particular terms that are at  
02:43 21 issue. And these particular terms that are at issue  
02:43 22 are, in some cases, identical with the PCI bus  
02:44 23 transaction. In some cases so close to identical as to  
02:44 24 be nonexistent.

02:44 25 I mean, I challenge ACQIS to identify a

02:44 1 difference between communicate address and data bits of  
02:44 2 a PCI bus transaction and convey address and data bits  
02:44 3 of a data bus transaction. Or very close with regard  
02:44 4 to the encoded claims, just sort of mixed up a little  
02:44 5 bit. And ACQIS has not identified any differences  
02:44 6 between those claim terms.

02:44 7 Now, ACQIS has said that the Federal  
02:44 8 Circuit law on construing like claims -- like is not  
02:44 9 applicable here and not as fine as we would apply. But  
02:44 10 I direct Your Honor, again, to the case that ACQIS  
02:44 11 attempted to rebut, Nestlé USA versus Steuben Foods,  
02:44 12 that's 884 F.3d 1350.

02:44 13 I mean, there -- and it is a two-page  
02:44 14 opinion, so it's short. The Federal Circuit addressed  
02:45 15 a situation where Nestlé previously appealed the  
02:45 16 board's -- a board's construction of a particular term  
02:45 17 involving deterrent claims of a different patent that  
02:45 18 were nonetheless related.

02:45 19 Nestlé then brought up the issue on  
02:45 20 appeal again. And the Court determined, and I quote:  
02:45 21 Neither party has pointed to any material difference  
02:45 22 between the two patents or their prosecution histories  
02:45 23 that would give rise to claim construction issues in  
02:45 24 this appeal different from those raised in the prior  
02:45 25 appeal. Accordingly, Steuben Foods has had a full and

02:45 1 fair opportunity to litigate the issue of claim  
02:45 2 construction during the prior appeal. It follows  
02:45 3 therefore that collateral estoppel protects Nestlé and  
02:45 4 obviates the need to revisit an issue that was already  
02:45 5 resolved against Steuben Foods. Importantly, our  
02:45 6 precedent makes clear that collateral estoppel is not  
02:45 7 limited to patent claims that are identical. Rather,  
02:45 8 it is the identity of the issues that were litigated  
02:45 9 that determines whether collateral estoppel should  
02:45 10 apply.

02:45 11 The exact same is true here. ACQIS has  
02:46 12 not identified any material differences. The one  
02:46 13 difference that I heard it identify between claims is  
02:46 14 apparently some claims require byte-enable bit in  
02:46 15 addition to requiring address and data bits.

02:46 16 And ACQIS did not address my contention,  
02:46 17 which I addressed at the outset, which is that the  
02:46 18 additional limitation does not make a difference for  
02:46 19 the purpose of infringement. And, frankly, does not  
02:46 20 make a difference for the purpose of the Court's -- the  
02:46 21 Federal Circuit's claim constructions.

02:46 22 If you look at Slide 12 at the back of  
02:46 23 our 12s -- at the back of our slides, we have an  
02:46 24 additional slide just sort of as backup with the  
02:46 25 Federal Circuit's constructions there. Row 2, you can



02:46 1 see that the Court construed terms with "address and  
02:46 2 data bits of a PCI transaction" as "communicating PCI  
02:46 3 transaction including all address data and control  
02:46 4 bits."

02:46 5 There's no reason to think that adding  
02:46 6 "byte enable" would somehow change this or remove  
02:47 7 "control bits." And really, the issue that ACQIS  
02:47 8 argued, the issue on -- one of the points on which  
02:47 9 summary judgment was granted is that PCI Express does  
02:47 10 not have PCI control bits. Does not have PCI control  
02:47 11 signals.

02:47 12 So with regard to the identity of issues,  
02:47 13 there is an identity of issues with claim construction.  
02:47 14 And I noticed that counsel for ACQIS did not challenge  
02:47 15 that there's an identity of issues for infringement as  
02:47 16 well. They're making the same allegations against the  
02:47 17 PCI Express standard here as they did in EMC.

02:47 18 Now, as far as actually litigated,  
02:47 19 counsel for ACQIS identified four prongs of the  
02:47 20 actually litigated thing, the actually litigated  
02:47 21 standard, the portion of collateral estoppel and said  
02:47 22 that we had not addressed them.

02:47 23 I think, Your Honor, that we have  
02:47 24 addressed those and we have clearly showed that, in  
02:48 25 fact, ACQIS actually litigated this on every point,

02:48 1 actually litigated claim construction on every point in  
02:48 2 the Federal Circuit, and they did, in fact, actually  
02:48 3 litigate in the Federal Circuit.

02:48 4 They raised the issue of claim  
02:48 5 construction. If you look at Exhibit 2 to our brief,  
02:48 6 Page 4 -- that's their opening brief -- they  
02:48 7 specifically raised the issue of whether the District  
02:48 8 Court misconstrued communicating a PCI bus transaction  
02:48 9 based on apparent agreement between the parties that  
02:48 10 did not exist, and they explicitly raised the issue --  
02:48 11 this is Issue No. 3 -- from their brief whether the  
02:48 12 District Court misconstrued encoded PCI bus transaction  
02:48 13 based on a prosecution disclaimer that had not occurred  
02:48 14 with regard to all of the patents, not just the '873  
02:48 15 patent.

02:48 16 So they actually raised the issue. They  
02:48 17 contested it hotly throughout the brief. It's evident  
02:48 18 throughout the brief that claim construction is what  
02:48 19 they were focused on, they submitted it to the Federal  
02:48 20 Circuit. And as you saw on -- I believe it's Slide 6  
02:48 21 of our slides, the Federal Circuit actually determined  
02:49 22 it. The Federal Circuit said, claim construction's  
02:49 23 what's at issue. We determined claim construction and  
02:49 24 noninfringement flows from that claim construction.

02:49 25 So it, in fact, was raised, contested,

02:49 1 submitted and determined. No question, I think, that  
02:49 2 claim construction was actually litigated on appeal.

02:49 3 So the only remaining question is whether  
02:49 4 or not actually litigating claim construction on appeal  
02:49 5 is sufficient to give rise to collateral estoppel.

02:49 6 And looking back to Nestlé USA versus  
02:49 7 Steuben Foods, again, we see that the Federal Circuit  
02:49 8 found collateral estoppel based on actually litigation  
02:49 9 (sic) the issues of claim construction during the prior  
02:49 10 appeal.

02:49 11 And counsel for ACQIS attempted to  
02:49 12 distinguish this by saying the Federal Circuit said  
02:49 13 they went through and carefully analyzed all the  
02:49 14 intrinsic evidence. That's not in here.

02:49 15 So this is a short opinion, and what it  
02:49 16 does say is neither party pointed to material  
02:49 17 differences. Therefore, they had a full and fair  
02:49 18 opportunity to litigate the issue of claim construction  
02:50 19 on appeal. They did not go into the depth of analysis.

02:50 20 The only thing they said about their  
02:50 21 prior analysis is they said: We previously vacated a  
02:50 22 construction below relying on binding lexicography.

02:50 23 That's it, and that's in a completely  
02:50 24 different section of the opinion. There's nothing  
02:50 25 where they said, well, it was fully litigated on appeal

02:50 1 because we went into depth and we did an in-depth  
02:50 2 analysis. They just said, the party had a full and  
02:50 3 fair opportunity to raise and litigate it on appeal.  
02:50 4 That's enough. And that's the situation here.

02:50 5 So again, claim construction issues were  
02:50 6 actually litigated. They were actually litigated on  
02:50 7 appeal. That's enough.

02:50 8 And counsel for ACQIS did not dispute  
02:50 9 that the infringement issues were actually litigated  
02:50 10 below. They were actually litigated below. There  
02:50 11 weren't any factual issues, that's why summary judgment  
02:50 12 was granted.

02:50 13 ACQIS did not dispute that PCI Express  
02:51 14 transactions, PCI Express did not have elements of the  
02:51 15 PCI bus transaction that were required under the  
02:51 16 Court's claim construction.

02:51 17 And just two more small things, and then  
02:51 18 I'll stop taking up your time, Your Honor.

02:51 19 So one point I want to make. ACQIS  
02:51 20 argued that, in fact, backwards compatibility hadn't  
02:51 21 been addressed before. Respectfully, Your Honor, I  
02:51 22 just don't think that's accurate.

02:51 23 If you look at ACQIS' opening brief on  
02:51 24 appeal, Exhibit 2, starting at Page 11, ACQIS has a  
02:51 25 whole section in their brief directed to backwards

02:51 1 compatibility being the problem that they were trying  
02:51 2 to solve.

02:51 3 They specifically call out that backwards  
02:51 4 compatibility was important because the ability to  
02:51 5 execute a PCI bus transaction, that is a specific PCI  
02:51 6 bus transaction that's compliant with the standard, was  
02:51 7 required for a computer system to be commercially  
02:52 8 acceptable.

02:52 9 And they say, ACQIS -- and I'm quoting at  
02:52 10 Page 13: ACQIS replaced the PCI standards physical  
02:52 11 layer, including the parallel PCI local bus with this  
02:52 12 combination of serial interface channels and interface  
02:52 13 controllers, yet it maintained backwards compatibility  
02:52 14 by enabling a new physical layer to communicate PCI  
02:52 15 standard bus transactions.

02:52 16 So the backwards compatibility it  
02:52 17 maintained was by communicating PCI standard bus  
02:52 18 transactions in accordance with the specification. Not  
02:52 19 by communicating PCI bus transactions or something  
02:52 20 backwards compatibility with PCI bus transactions.

02:52 21 That's what they said to the Federal  
02:52 22 Circuit. That's what they previously argued. It is  
02:52 23 not a new issue that needs to be readdressed here. And  
02:52 24 it's not a reason to depart from the Federal Circuit's  
02:52 25 claim construction when it has these particular

02:52 1 arguments in front of it.

02:52 2 And then the second point I want to make,  
02:52 3 Your Honor, is just simply ACQIS has, I think, tried to  
02:53 4 undermine the Federal Circuit's construction by  
02:53 5 pointing out that it's non-precedential and that it's  
02:53 6 short.

02:53 7 The fact that it's short and that it's  
02:53 8 non-precedential does not in any way undermine its  
02:53 9 applicability with regard to collateral estoppel.  
02:53 10 That's something that the Federal Circuit has made  
02:53 11 clear in its internal operating procedures. That's on  
02:53 12 Page 10 -- or Slide 10 of Wiwynn's slides.

02:53 13 And frankly, Your Honor, I think the fact  
02:53 14 that the Federal Circuit's opinion was short, to the  
02:53 15 point, and it went out of its way to specifically adopt  
02:53 16 the claim constructions of the District Court makes it  
02:53 17 more powerful and more evident that they were, in fact,  
02:53 18 thinking of these other cases which were raised at  
02:53 19 argument. And the fact that this would be something  
02:53 20 that would apply to ACQIS' determination and to its  
02:53 21 patents going forward.

02:53 22 So they were not dealing with the same  
02:53 23 issue again, just as we're asking your Court to find  
02:53 24 that we should not be dealing with the same issue that  
02:53 25 the Federal Circuit has already raised and addressed.

02:53 1 So unless Your Honor has any questions,  
02:54 2 that's it for me. And apparently I think that's it  
02:54 3 for --

02:54 4 MR. SIEGMUND: Nothing further from  
02:54 5 Wiwynn, Judge.

02:54 6 MR. BURESH: Your Honor, can I beg two  
02:54 7 minutes?

02:54 8 THE COURT: Whatever you...

02:54 9 MR. BURESH: Eric Buresh on behalf of  
02:54 10 ASUSTek.

02:54 11 I'm only going to discuss Slide 10 from  
02:54 12 ACQIS' presentation, this issue of backwards  
02:54 13 compatibility.

02:54 14 The issue here is the same issue that was  
02:54 15 raised at EMC. And to say that Your Honor's  
02:54 16 construction is consistent with what the EMC court  
02:54 17 found in -- on claim construction is far, far from  
02:54 18 accurate.

02:54 19 If we look at Slide 10, there's two  
02:54 20 different types of backwards compatibility, okay? It's  
02:54 21 a frame of reference. Using the quotes that ACQIS has  
02:54 22 presented on Slide 10: PCI bus transaction allows  
02:55 23 incompatibility with PCI legacy devices. In that first  
02:55 24 box.

02:55 25 In the second box we see, again, legacy

02:55 1 devices and that there is backwards compatibility with  
02:55 2 an installed base of peripherals.

02:55 3 What this discussion is doing is saying  
02:55 4 I'm looking at the PCI standard and looking backwards  
02:55 5 in time. So that the invention here is making the PCI  
02:55 6 bus standard applicable backwards in time to peripheral  
02:55 7 devices that had already been installed back  
02:55 8 previously, okay? That's the frame of reference, is  
02:55 9 looking to the past.

02:55 10 What ACQIS is doing in this case and what  
02:55 11 they did in EMC is they're trying to take backwards  
02:55 12 compatibility and say, I want to look forward in time  
02:55 13 to a future standard that didn't exist at the time of  
02:55 14 these patents, which is PCIe Express, and then say in  
02:55 15 what, I think, counsel earlier described as  
02:55 16 creativeness to say, I'm going to stand at PCIe Express  
02:56 17 and look backwards in time to PCIe -- I'm sorry -- to  
02:56 18 PCI standard.

02:56 19 Those are two different frames of  
02:56 20 reference.

02:56 21 And if Your Honor will recall, that  
02:56 22 phrase "or backwards compatible," it did not come from  
02:56 23 ACQIS. They did not propose that as a construction in  
02:56 24 this case. The Court introduced that concept.

02:56 25 Similarly, ACQIS didn't introduce that



02:56 1 concept in the claim construction phase in EMC. There  
02:56 2 was no backwards compatibility in the claim  
02:56 3 construction.

02:56 4 But when it came to summary judgment,  
02:56 5 they argued that the claim construction without "or  
02:56 6 backwards compatibility" used that wrong frame of  
02:56 7 reference, where we go up to PCIe -- or PCI Express and  
02:56 8 look backwards in time.

02:56 9 And the District Court in Massachusetts  
02:56 10 said, no. That's not within the claim scope. That's  
02:56 11 not what backwards compatibility is talking about.  
02:56 12 Backwards compatibility is talking about going back to  
02:56 13 PCI peripheral devices that were already installed.  
02:56 14 Okay?

02:56 15 That's what EMC said. And they said to  
02:56 16 go forward in time to PCI Express is outside the claim  
02:57 17 scope.

02:57 18 Now, to say that was stipulated is just  
02:57 19 silliness because that argue -- that argument was  
02:57 20 appealed. That claim construction ruling that occurred  
02:57 21 at summary judgment was the primary issue on appeal.  
02:57 22 Why would it be stipulated if they're arguing it at  
02:57 23 appeal?

02:57 24 And the Federal Circuit, of course, said  
02:57 25 the EMC court had it exactly right, that backwards

02:57 1 compatibility is not looking from the perspective of  
02:57 2 PCIe backwards in time and accordingly affirmed the  
02:57 3 claim construction by the District Court and the  
02:57 4 summary judgment ruling.

02:57 5 So, Your Honor, don't let this creative  
02:57 6 use of the "backwards compatibility" confuse you. The  
02:57 7 frame of reference is critically important.

02:57 8 Thank you, Your Honor.

02:57 9 THE COURT: Yes, sir.

02:58 10 MR. SIEGMUND: Nothing further from us,  
02:58 11 Your Honor.

02:58 12 THE COURT: Plaintiff?

02:58 13 MR. COLLARD: No. Nothing further from  
02:58 14 ACQIS unless you have questions.

02:58 15 THE COURT: I don't.

02:58 16 (Off-the-record bench conference.)

02:58 17 THE COURT: I'm going to take about a  
02:58 18 ten-minute break. It's just before 3:00. If you all  
02:58 19 would be back in here by about 3:10, that'd be great.

02:59 20 THE BAILIFF: All rise.

02:59 21 (Recess taken.)

03:22 22 THE BAILIFF: All rise.

03:22 23 THE COURT: Thank you. You may be  
03:22 24 seated.

03:22 25 Okay. I think I have all this straight.

03:22 1 I'm going to do my best.

03:22 2 So the Court is -- to the extent that a  
03:22 3 claim term was construed by this Court and it has been  
03:22 4 construed by the Federal Circuit, or the Federal  
03:22 5 Circuit has adopted what was done elsewhere, the Court  
03:22 6 is going to amend my claim term constructions to be the  
03:23 7 same as the Federal Circuit.

03:23 8 With one exception. I'm not certain that  
03:23 9 adopting what the Circuit did means necessarily that  
03:23 10 backward compatibility has to be excluded.

03:23 11 And so now knowing what I'm doing, we'd  
03:23 12 like additional briefing on whether or not backward  
03:23 13 compatibility -- including that would be consistent  
03:23 14 with what the Circuit did or not.

03:23 15 So that -- it's an open question in my  
03:23 16 mind. It may turn out we have a mini Markman on this  
03:23 17 or we may just do it -- if the briefs are sufficient,  
03:23 18 for us to decide, that's what we'll do without another  
03:23 19 hearing. But we also might have a mini Markman,  
03:23 20 depending on that one issue, about whether or not that  
03:23 21 should still be in there.

03:24 22 Now, I'm not going to put the plaintiff  
03:24 23 on the spot here, but it seems to me that having made  
03:24 24 my ruling, you all may need to go back and decide what  
03:24 25 you want to do with your complaint in terms of

03:24 1 allegations of infringement against these products.

03:24 2 And so to that end, how quickly do you  
03:24 3 think -- anyone from the plaintiff's side can answer.  
03:24 4 How quickly do you think you all can make the  
03:24 5 assessment of whether or not you want to maintain the  
03:24 6 allegations of infringement based on my ruling now or  
03:24 7 not? How long -- it's entirely up to -- it's your  
03:24 8 case. And so I'm not looking for a short turnaround.  
03:24 9 I want to give you all whatever time you think you  
03:24 10 need.

03:24 11 So what amount of time does the plaintiff  
03:24 12 believe it needs to have a rule -- decide whether it  
03:24 13 has a Rule 11 basis to do whatever you're going to do?  
03:24 14 And I have no -- I'm not forecasting at all what I --  
03:25 15 you all need to do whatever you need to do. But about  
03:25 16 how long do you think it would take you to make that  
03:25 17 assessment?

03:25 18 MR. COLLARD: May we have a moment?

03:25 19 THE COURT: Sure.

03:25 20 MR. COLLARD: Your Honor, I think we  
03:25 21 could probably do that in four weeks. But I think I  
03:25 22 want to be clear that we made these narrowing decisions  
03:25 23 under the old claim construction, so we may need to  
03:25 24 revisit which patents we are --

03:25 25 THE COURT: I'm giving you -- you're

03:25 1 getting a do-over.

03:25 2 MR. COLLARD: Okay.

03:25 3 THE COURT: And that's the point of this.

03:25 4 You're -- I mean, you -- when you were operating, you  
03:25 5 were acting in good faith based on what I'd done. And  
03:25 6 I think it'd be totally unfair to you, now that I've  
03:26 7 amended what I did, to prejudice you in that way.

03:26 8 So I want -- again, is four weeks enough  
03:26 9 for you to go through and assess and make whatever  
03:26 10 changes you want to make? This is entirely up to you  
03:26 11 all.

03:26 12 MR. COLLARD: I appreciate it, Your  
03:26 13 Honor. I guess maybe six, because --

03:26 14 THE COURT: Whatever -- you know,  
03:26 15 whatever you want, I'm okay with.

03:26 16 MR. COLLARD: That's fine. Six.

03:26 17 THE COURT: Okay. Now, I'm going to  
03:26 18 assume, but I could be wrong, that either some claims  
03:26 19 may be dropped or some claims may be added as a result  
03:26 20 of this. And so it's with that presumption that  
03:26 21 it's -- I'm going to guess that you all -- I need to  
03:26 22 stop saying that -- that plaintiff is going to have to  
03:26 23 do amended infringement contentions when you -- I think  
03:26 24 that's likely.

03:26 25 Yes, sir?

03:26 1 MR. TAMKIN: May I, Your Honor?

03:27 2 THE COURT: Yeah, of course.

03:27 3 MR. TAMKIN: I appreciate that.

03:27 4 THE COURT: Yes, sir.

03:27 5 MR. TAMKIN: So one of the factors that  
03:27 6 you started with, which was we may need to do -- we're  
03:27 7 going to do some briefing on this backwards  
03:27 8 incompatibility. Theoretically that could impact what  
03:27 9 we're going to do --

03:27 10 THE COURT: Sure. I wasn't -- let me  
03:27 11 interrupt you and say as soon as you said that, I know  
03:27 12 where you're going.

03:27 13 MR. TAMKIN: Exactly.

03:27 14 THE COURT: So let's do this. Let's --  
03:27 15 how long -- let me ask a different question. Let's try  
03:27 16 something different. You know, eventually I'm going to  
03:27 17 figure out how to do this job better.

03:27 18 How long do you all think each side would  
03:27 19 need to do the additional briefing?

03:27 20 I would think it could be a pretty quick  
03:27 21 turnaround, a couple of weeks, you know, couple of  
03:27 22 weeks, right?

03:27 23 MR. COLLARD: That works for us, Your  
03:27 24 Honor.

03:27 25 THE COURT: Is there any reason it

03:27 1 couldn't be simultaneous briefing?

03:27 2 I mean, I think you all touched on it in  
03:27 3 the other briefing. It's a pretty discrete deal. What  
03:28 4 I would probably prefer is you all just in two weeks,  
03:28 5 mas o menos, get me a brief on why you're right, and  
03:28 6 then we can look at it. I'd like to move this part of  
03:28 7 it quickly so that then the -- knowing what I'm going  
03:28 8 to do with that, the plaintiff can then make its  
03:28 9 decision.

03:28 10 Mr. Ravel?

03:28 11 MR. RAVEL: Your Honor, two weeks sounds  
03:28 12 fine with us. And the simultaneous briefing's a really  
03:28 13 good idea, Judge, but I think both of these sides are  
03:28 14 going to want to, you know, maybe respond a little with  
03:28 15 a letter with three paragraphs, have a short hearing.  
03:28 16 I just --

03:28 17 THE COURT: I'm going to give you two  
03:28 18 weeks from today to get me a brief no longer than five  
03:28 19 pages. And then you can have a second brief, a  
03:28 20 response, a week later no longer than five pages.

03:28 21 MR. RAVEL: Thank you, Judge.

03:28 22 THE COURT: Okay. I mean, I don't care  
03:28 23 how long it is, but my clerks do. And so what we'll do  
03:28 24 then is we will -- at the end of that hearing, I will  
03:28 25 rule at the end -- we'll have a hearing on this as soon

03:29 1 as I can after we -- it's complete.

03:29 2 And, Mr. Ravel, I'll put this on you -- I  
03:29 3 don't care who does it -- but when the second one is  
03:29 4 filed, if -- you know, we do have other things coming  
03:29 5 in, if you would be so kind as to let -- I think this  
03:29 6 is Mr. Gunnell's case. If you would be so kind as to  
03:29 7 let him know that it's complete and we need to set a  
03:29 8 hearing, we'll --

03:29 9 MR. RAVEL: Happy to do it. A day  
03:29 10 without an e-mail to your chambers is like a day  
03:29 11 without sunshine.

03:29 12 THE COURT: I understand. For us too.

03:29 13 And so we'll do the hearing. After the  
03:29 14 hearing when I let you all know what we're going to do,  
03:29 15 we'll set a deadline for the plaintiffs to amend their  
03:29 16 pleadings.

03:29 17 And the long -- the reason I'm being so  
03:29 18 long-winded is it makes sense to me to not take up the  
03:29 19 question of amending the invalidity contentions today,  
03:29 20 because it looks -- I think the likely scenario,  
03:29 21 regardless of what happens, is there are going to be  
03:30 22 new or additional infringement contentions. And so it  
03:30 23 just makes sense that there'll be new invalidity  
03:30 24 contentions following that.

03:30 25 So I'm going to deny the motion for -- to



03:30 1 amend the invalidity contentions at this point just to  
03:30 2 get it off of my docket without prejudice. When we get  
03:30 3 back together at the hearing, I will -- I'm going to  
03:30 4 allow the defendants to amend their invalidity  
03:30 5 contentions.

03:30 6 But it will be -- and in probably a  
03:30 7 different scope that -- that deals with -- you may or  
03:30 8 may not need to have the issues that are currently  
03:30 9 present. You're going to -- the defendant is going to  
03:30 10 have an opportunity to amended invalidity contentions.  
03:30 11 And I'm going to make that as broad as the infringement  
03:30 12 contentions are going to be.

03:30 13 So I think that takes up a lot of what we  
03:30 14 have. I think there are other discovery issues that I  
03:30 15 don't know whether they are now moot or not.

03:30 16 MR. RAVEL: Judge, one clarifying issue  
03:31 17 on what you just ruled.

03:31 18 THE COURT: Yes.

03:31 19 MR. RAVEL: Is I think both sides are a  
03:31 20 little disappointed that this is inconsistent with the  
03:31 21 December trial that we were hurtling towards with --

03:31 22 THE COURT: Yeah. We're not going to get  
03:31 23 to trial --

03:31 24 MR. RAVEL: -- with rebuttal expert  
03:31 25 reports.

03:31 1 THE COURT: We're not going to get to  
03:31 2 trial in December.

03:31 3 MR. RAVEL: Obviously. But are we just  
03:31 4 going to pause everything and do a new --

03:31 5 THE COURT: I think that -- that's what  
03:31 6 makes sense to me, unless the plaintiff thinks there'll  
03:31 7 be some prejudice. It seems to me the plaintiff would  
03:31 8 like to know -- would like to be certain of which  
03:31 9 claims they're asserting.

03:31 10 And so, yes, we'll pause everything. At  
03:31 11 least for the next -- we'll pause it until the next  
03:31 12 hearing. Everything's stayed until the next hearing.

03:31 13 And then if one of you -- even though  
03:31 14 this will, I'm sure, be on the top of my mind and I'll  
03:31 15 think of little else over the next three weeks. If you  
03:31 16 would remind me we had this hearing and what it was I  
03:31 17 said, then we'll take up the issues of scheduling and  
03:31 18 all these things.

03:31 19 MR. RAVEL: Zoom or live for the mini  
03:32 20 Markman, Judge?

03:32 21 THE COURT: Look. There are no --  
03:32 22 there's no group of lawyers I would rather have here in  
03:32 23 person. You're one of my favorite lawyers of anyone  
03:32 24 who's appeared in front of me. I would love for you  
03:32 25 all to be here.

03:32 1 That being said, it's a -- it's hot and  
03:32 2 it's a long way away. I don't know that it merits --  
03:32 3 it'll be a short hearing, I would think. I would think  
03:32 4 it'd be fine to do it by Zoom. Because I think that'd  
03:32 5 be much more cost efficient for you guys.

03:32 6 But if you huddle up and you want -- no  
03:32 7 one's going to keep you away, but it just seems -- this  
03:32 8 is a pretty discrete deal that will take much less  
03:32 9 time. So let's plan on doing this by Zoom, unless you  
03:32 10 all tell me that you think that doesn't work.

03:32 11 Is there anything else we need to take up  
03:32 12 today?

03:32 13 MR. COLLARD: I just had one question,  
03:32 14 Your Honor.

03:32 15 Are you going to issue something  
03:32 16 clarifying specifically which terms and sort of similar  
03:32 17 to your prior claim construction order?

03:32 18 THE COURT: We will, at least which -- we  
03:32 19 will identify which claim terms. And then you should  
03:33 20 presume that the ones we identify are the ones that --  
03:33 21 you should presume that it's the Federal Circuit -- the  
03:33 22 construction the Federal Circuit approved.

03:33 23 MR. COLLARD: Okay.

03:33 24 THE COURT: It may be as short as a text  
03:33 25 or an e-mail, if that goes faster. It may be an -- but

03:33 1 we will do something that formally gives you the  
03:33 2 words -- the claim terms that we're talking about.

03:33 3 MR. COLLARD: Okay.

03:33 4 THE COURT: I think they're pretty  
03:33 5 clearly disclosed in the briefing, and I know I had a  
03:33 6 chart in here that I just don't know how quickly I  
03:33 7 could get to it so I could read them in, but yes -- or  
03:33 8 I'll tell you what, in fact, I'm going to do something  
03:33 9 completely different.

03:33 10 Mr. Ravel, again, I'm going to pick on  
03:33 11 you. You send us the claim terms that you believe I'm  
03:33 12 including, copy plaintiff's counsel.

03:33 13 And if plaintiff's counsel believes that  
03:33 14 Mr. Ravel has been too -- is inaccurate in what claim  
03:34 15 terms were covered by the Federal Circuit, you let us  
03:34 16 know and we'll take it up then.

03:34 17 But, Mr. Ravel, if you will take the  
03:34 18 laboring oar of getting us something that clearly  
03:34 19 identifies which claim terms they are, and I would like  
03:34 20 the plaintiffs to sign off on it. Not that they're  
03:34 21 signing off that what I'm doing is correct, but just  
03:34 22 that the claim terms that you are identifying are the  
03:34 23 correct claim terms.

03:34 24 MR. RAVEL: We'll take care of it, Judge.

03:34 25 THE COURT: Get Mr. Siegmund to help if

03:34 1 you really need a, you know, pro from Dover on this  
03:34 2 one. You know, he was a big deal at Baylor Law School  
03:34 3 a long time ago.

03:34 4 MR. RAVEL: He had a pretty high-class  
03:34 5 clerkship too.

03:34 6 THE COURT: He had a big time -- those  
03:34 7 are hard to get. I wouldn't have qualified.

03:34 8 (Laughter.)

03:34 9 THE COURT: So anything else we need to  
03:34 10 take up?

03:34 11 Yes, sir.

03:34 12 MR. SIEGMUND: Judge, a very wise judge  
03:34 13 told me that you should let your audience know when  
03:34 14 you're going to cede tide back them. We did have a  
03:35 15 discovery dispute, but in light of staying all the  
03:35 16 deadlines, I think we're going to meet and confer and  
03:35 17 try to reach a resolution on it.

03:35 18 So from Wiwynn's perspective, we don't  
03:35 19 have anything else.

03:35 20 THE COURT: Anyone disagree with that on  
03:35 21 the defense counsel side?

03:35 22 And from the plaintiffs?

03:35 23 MR. COLLARD: No. We had one dispute  
03:35 24 with ASUS, but I think the same thing will be...

03:35 25 THE COURT: I'm happy to take it up. I'm

03:35 1 happier for you all to try and work it out in light of  
03:35 2 what we've done here.

03:35 3 I appreciate the arguments that were made  
03:35 4 today. They were very helpful. And but -- as we were  
03:35 5 talking back there, I realized I wasn't completely  
03:35 6 clear enough on the issue of backward compatibility to  
03:35 7 make the decision right now. So your briefing will  
03:35 8 help on that, and we will get that resolved as soon as  
03:35 9 you get the briefing to us.

03:35 10 Anything else?

03:35 11 Have a good afternoon.

03:35 12 (Hearing adjourned.)

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1 UNITED STATES DISTRICT COURT )  
2 WESTERN DISTRICT OF TEXAS )  
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5 I, Kristie M. Davis, Official Court  
6 Reporter for the United States District Court, Western  
7 District of Texas, do certify that the foregoing is a  
8 correct transcript from the record of proceedings in  
9 the above-entitled matter.

10 I certify that the transcript fees and  
11 format comply with those prescribed by the Court and  
12 Judicial Conference of the United States.

13 Certified to by me this 14th day of July  
14 2022.

15  
16 /s/ Kristie M. Davis  
KRISTIE M. DAVIS  
Official Court Reporter  
800 Franklin Avenue  
Waco, Texas 76701  
18 (254) 340-6114  
kmdaviscsr@yahoo.com  
19  
20  
21  
22  
23  
24  
25